

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

WILLIAM C. FLOYD JR.,

Petitioner,

vs.

SCOTT FRAKES, Director of the
Nebraska Department of Correctional
Services; and BRAD HANSEN, Warden
Tecumseh State Correctional Institution;

Respondents.

8:13CV195

**MEMORANDUM
AND ORDER**

This matter is before the court on Petitioner's motion ([filing no. 158](#)) asking the court to consider his amended habeas petition ([filing no. 127](#)) as supplemental to, rather than superseding, his original petition. Petitioner asserts that there are exhausted claims in his original petition that are not included in his amended petition, and Petitioner places the blame on his former court-appointed attorney for failing to include the exhausted claims in the amended petition filed by counsel.

This case has now been pending before this court for five years. On April 7, 2017, after Petitioner's counsel withdrew from this case per Petitioner's request and the case was reassigned to me for disposition, I specifically ordered Petitioner to "file an amended petition for writ of habeas corpus **that clearly presents all of his claims for relief**" and warned Petitioner that "the amended petition *will supersede, not supplement*, all of his previous petitions." ([Filing No. 122 at CM/ECF pp.1–2](#) (second emphasis added).) Petitioner filed his amended petition on July 7, 2017. ([Filing No. 127.](#))

As the court expressly told Petitioner, the amended petition would supersede, not supplement, all his previous petitions. The amended petition ([filing](#)

[no. 127](#)) is the controlling pleading in this matter, and Petitioner's contentions in support of considering it as merely supplemental are wholly unavailing. Regardless of his counsel's alleged failure to include certain claims in his previous amended petition ([filing no. 104](#)), the fact remains that Petitioner was ordered to file an amended petition that set forth all his claims for relief. Thus, Petitioner was solely responsible for including any claims in the amended petition he wished to present to the court for consideration. Moreover, Petitioner fails to identify which claims from any of his previous petitions he wishes the court to consider in addition to the six claims with fifty-eight (58) subparts contained in the amended petition. (See [Filing No. 136](#).) Accordingly, the court will deny Petitioner's request to consider the amended petition as supplemental to his previous petitions.

Respondents have filed their answer to the amended petition and a brief in support of their answer. (See [Filing No. 143](#); [Filing No. 144](#).) Petitioner has until July 26, 2018, to file a brief in response.

IT IS THEREFORE ORDERED that Petitioner's motion ([filing no. 158](#)) to consider the amended petition as supplemental to the previous petitions is denied.

Dated this 6th day of July, 2018.

BY THE COURT:

s/ Richard G. Kopf
Senior United States District Judge